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 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
 CERAMICS, INC. dba GLIDEWELL
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.
 SACV11-01309-DOC(ANx)

**KEATING'S RESPONSE TO
 GLIDEWELL'S OBJECTIONS
 TO EVIDENCE SUBMITTED
 BY KEATING IN SUPPORT OF
 KEATING'S MOTIONS FOR
 SUMMARY JUDGMENT**

Date: December 17, 2012
 Time: 8:30 a.m.
 Location: Courtroom 9D

Honorable David O. Carter

1 Glidewell argues against admission of various web page printouts offered
 2 into evidence, disputing (1) authentication; (2) personal knowledge; (3) hearsay;
 3 and (4) relevance. (Glidewell's Statement of Objections to Evidence Submitted
 4 in Support of Keating's Motions for Summary Judgment ("Glidewell's
 5 Objections.") [Doc #115.] As described in detail below, Glidewell misstates
 6 and misapplies the appropriate law. According to the proper application of the
 7 law, the web pages can be properly authenticated by Dr. Eggleston, by Mr.
 8 Jankowski, indeed, by any competent witness with personal knowledge of the
 9 content of the webpage printouts. Because Keating has competent witnesses
 10 testifying to the authenticity of the web page print outs, the Court should deem
 11 them admissible evidence for consideration in ruling on the parties' summary
 12 judgment motions.

13 Filed concurrently herewith are the Second Declaration of Rustin
 14 Mangum, the Second Declaration of Dr. David Eggleston, the Declaration of
 15 Nathan Wenk, and the Second Declaration of Lori Boatright.

16 **I. Website Printouts Can Be Authenticated By The Proponent**
 17 **Attorney Declaring That He Accessed The Website And**
 18 **Printed The Documents.**

19 In a summary judgment motion, the authentication requirement is
 20 satisfied when "the trial judge determines that there is. . . evidence sufficient to
 21 support a finding that the matter in question is what its proponent claims."
 22 *Jarritos, Inc. v. Reyes*, 345 Fed. Appx. 215, 218 (9th Cir. 2009) (quoting *Orr v.*
 23 *Bank of America NT & SA*, 285 F.3d 764, 773, n.6 (9th Cir. 2002)). With
 24 respect to authentication of websites printouts, the trial court practice is to allow
 25 authentication by declaration of the individual who accessed the website.

26 For example, the court in *Jarritos, Inc. v. Los Jarritos* held that a mere
 27 explanation by the plaintiff's counsel was sufficient to authenticate a website
 28 printout. *Jarritos, Inc. v. Los Jarritos*, C05-02380 JSW, 2007 WL 1302506 at

1 *10 (N.D. Cal May 2, 2007) (overruled on appeal on other grounds, *Jarritos,*
2 *Inc.*, 345 Fed. Appx. 215). On a motion for summary judgment, the plaintiff
3 offered a printout of the defendant's website to show that the defendant was
4 improperly using plaintiff's trademark. The court found that the websites were
5 properly authenticated when the plaintiff's counsel explained that he personally
6 typed in the web address, accessed the website, and printed the page. The
7 explanation was provided in the plaintiff's response to the evidentiary
8 objections, and was sufficient to overcome the objection. *Id.* at *10.

9 Glidewell repeatedly asserts that there needs to be authentication by
10 "someone with knowledge," but provides an improper definition. Glidewell
11 implies that "someone with knowledge" must be someone affiliated with the
12 website:

13 "Here neither Dr. Eggleston nor Jankowski purport to be
14 affiliated with any of the companies whose websites are offered
15 into evidence. Accordingly, Keating has failed to authenticate
16 the alleged website printouts...."

17 (Glidewell's Objections 3:21-22, internal citations omitted).

18
19 There is no foundation for Glidewell's assertion, and courts have rejected this
20 argument. For example, in *Rearden v. Rearden Commerce*, the court dismissed
21 this argument, remarking:

22 "Each of the denied objections is based upon the nonsensical
23 proposition that an attorney cannot authenticate a print-out from
24 a publicly accessible website. Plaintiffs repeatedly object that
25 [the attorney] 'has no personal knowledge of any of the
26 information contained' in the exhibits. [The attorney's]
27 declarations are not offered for the purposes of testifying to the
28 substance of the various news articles and documents—they are

1 offered to authenticate the source of those documents, i.e., that
2 they were actually downloaded from the internet addresses
3 indicated.”

4 *Rearden LLC v. Rearden Commerce, Inc.*, 597 F. Supp. 2d 1006, 1027 (N.D.
5 Cal. 2009) (overruled on appeal on other grounds).

6 Other courts have agreed with the *Rearden* court. For example, in *Perfect*
7 *10, Inc. v. Cybernet Ventures*, the court found that website printouts were
8 sufficiently authenticated simply where the proponent declared that they were
9 “true and correct copies of pages printed from the Internet that were printed by
10 [the proponent] or under his direction.” *Perfect 10, Inc. v. Cybernet Ventures*,
11 *Inc.*, 213 F. Supp. 2d 1146, 1153-54 (C.D. Cal. 2002) (citing *U.S. v. Tank*, 200
12 F.3d 627, 630 (9th Cir. 2000)) (holding followed by *Premier Nutrition, Inc. v.*
13 *Organic Food Bar, Inc.*, SACV 06-0827 AG(RNBx), 2008 WL 1913163 at *6
14 (C.D. Cal. March 27, 2008). The court found it additionally persuasive that
15 “computer printouts [were] the only practical method by which the allegations
16 of the complaint [could] be brought before the Court,” suggesting that requiring
17 anything more to authenticate the documents would be impracticable, especially
18 given the number of website pages produced. *Id.* at 1154.

19 Similarly, in *Osborn v. Butler*, the court held that a website printout was
20 sufficiently authenticated where the attorney explained that he printed the
21 website, gave the website address, and represented that it had not been altered or
22 changed from the form maintained at the website address. *Osborn v. Butler*,
23 712 F. Supp. 2d 1134, 1146 (D. Idaho 2010).

24 Each of these cases shows that trial court practices supports admitting
25 website printouts as evidence. Authentication of the printouts can be as simple
26 as a declaration from the attorney (made even in response to an objection) that
27 the attorney printed the page from the website address and did not alter the form
28 maintained at the website address.

1 **II. Glidewell's Cases Are Distinguishable Because They Stand For**
2 **Propositions Inapplicable To The Facts Of This Case.**

3 Case law consistently holds that authenticating webpage printouts takes
4 nothing more than a declaration from the person printing out the pages.
5 Glidewell points to several cases attempting to support its assertion that an
6 employee of the website holder must authenticate the printouts, but fails to fully
7 disclose the narrow circumstances to which each of these cases apply.

8 Glidewell's cases all fall within a narrow exception to the general rule,
9 which does not apply here. Specifically, those courts have held that when a
10 party offers the website printout *as a statement of the other party*, then a higher
11 showing of authentication is needed. In each case, the proponent offered the
12 website printouts effectively as evidence of statements made by the adverse
13 party.

14 In *In re Homestore.com*, the plaintiffs tried to use earnings statements and
15 press releases downloaded from the defendant's website as evidence for its
16 claims of fraud in the defendant's accounting practices. *In re Homestore.com*,
17 *Inc. Sec. Litig.*, 347 F. Supp. 2d 769 (C.D. Cal. 2004). The court concluded
18 that such documents, which otherwise may be self-authenticating, could not be
19 self-authenticating when downloaded from a website. *Id.*, at 782-83. Because
20 the documents were offered as a communication made by the defendant to the
21 public, the court required a heightened level of authentication that the
22 statements in the document were in fact made by the defendant. *Id.* at 782-83.
23 The printouts were not being used merely to show that the earnings and press
24 releases were on the website, but rather to prove the intricate details contained
25 therein.

26 The same narrow circumstances apply in *Wady v. Provident Life*. *Wady v.*
27 *Provident Life and Accident Ins. Co. of America*, 216 F. Supp. 2d 1060 (C.D.
28 Cal. 2002). In *Wady*, the plaintiff sought to use printouts from the defendant's

1 website as the defendant's statements. *Id.* at 1064. The court required a
2 heightened standard of authentication for the printouts when used for that
3 purpose, because it had to be shown that the defendant actually authored the
4 statements in the documents. *Id.* at 1064. The court did not deem the
5 documents inadmissible merely because they were printouts from a website.

6 The court's opinion in *Internet Specialties West v. ISPWEST*, was
7 factually bare. *Internet Specialties West, Inc. v. ISPWEST*, CV 05-3296 FMC
8 AJWx, 2006 WL 4568796 (C.D. Cal. Sept. 19, 2006). Nevertheless, the court
9 relied exclusively on *Wady* and *In re Homestore.com*, which, as established
10 above, are factually distinct from this case. The court did note that "[c]ertainly,
11 a qualified expert may rely on information he obtained off the internet, even if
12 hearsay, in forming his opinions." *Id.* at *1.

13 The final case relied on by Glidewell is likewise distinguishable. In *Costa*
14 *v. Keppel Singmarine Dockyard*, the plaintiff offered printouts from the
15 defendant's website as evidence of the defendant's corporate structure, which
16 was at issue in the case. *Costa v. Keppel Singmarine Dockyard PTE, Ltd.*, 2003
17 WL 24242419 (C.D. Cal. 2003)). The web pages were being used essentially as
18 a statement and admission of the defendant regarding its corporate structure. *Id.*
19 at *7, n. 74. Accordingly, the court found that there needed to be some
20 authentication that these were in fact statements of the defendant before holding
21 the defendant liable to them, citing to *Wady*. *Id.* at n. 74.

22 In each of Glidewell's cases, a party sought to use website content against
23 the other party as a statement made by that other party. In each case, the court
24 deemed it important to establish the identity of the author of the statements
25 accessed on the website (which often required authentication by someone from
26 the party's company). That is not the case here. Keating is not using the website
27 evidence to prove statements made by Glidewell, or to prove that any statements
28 on the websites is true. Keating is using the website printouts to show the

1 *manner in which words are used*, including the BruxZir mark, within web
 2 pages presented by companies in the dental industry. The websites establish, for
 3 example, the existence of companies in the dental field using the BruxZir mark
 4 on their websites without attributing any connection to Glidewell. It is the mere
 5 fact that these webpages exist that is relevant to Keating's arguments. *Rearden*
 6 *LLC*, 597 F. Supp. 2d at 1027.

7 For the website pages relied on by Keating, the standard rule for
 8 authenticating web printouts applies—the web documents may be authenticated
 9 by anyone with competent personal knowledge about the accuracy of the
 10 document as compared to the website pages. This may be provided by
 11 declaration (such as those filed concurrently herewith).

12 **III. Keating's Counsel and Dr. Eggleston Have the Personal**
 13 **Knowledge Necessary to Authenticate the Website Printouts**
 14 **Because They Personally Accessed the Websites.**

15 As detailed in their declarations filed herewith, Keating's counsel, Mr.
 16 Rustin Mangum and Mr. Nathan Wenk, and Keating's expert witness, Dr. David
 17 Eggleston, have the personal knowledge necessary to authenticate the website
 18 printouts. It is well established that the individual who accesses the website and
 19 prints out the pages has the "personal knowledge" to authenticate the printouts.
 20 *Rearden LLC*, 597 F. Supp. 2d at 1027 (finding plaintiff's argument that an
 21 attorney cannot authenticate a publicly accessible website "nonsensical"); *see*
 22 *also Osborn*, 712 F. Supp. 2d at 1146; *Jarritos*, 2007 WL 1302506 at *10.

23 Mr. Mangum and Mr. Wenk personally accessed the web pages,
 24 personally printed them out, and have verified that they have not made any
 25 changes to the printouts. They have additionally provided a detailed account of
 26 the web addresses of each of the website printouts as well as when the website
 27 was accessed and the printout created. *See Osborn*, 712 F. Supp. 2d at 1146;
 28 *Jarritos*, 2007 WL 1302506 at *10; *Perfect 10*, 213 F. Supp. 2d at 1153-54.

1 Similarly, Dr. Eggleston has verified that he has visited each of the
 2 websites and confirmed that the webpage printouts are the same as the websites
 3 he accessed. He has provided a detailed account of the web addresses, the
 4 actions taken, and the dates he conducted them. Accordingly, the personal
 5 knowledge condition for authentication of the website printouts is satisfied.

6 **IV. Keating's Counsel and Dr. Eggleston Have Properly**
 7 **Authenticated the Website Printouts By Filing a Declaration in**
 8 **Support Thereof.**

9 Filed herewith are declarations from Mr. Mangum, Mr. Wenk, and Dr.
 10 Eggleston that includes the information necessary to authenticate the website
 11 printouts. See *Jarritos*, 2007 WL 1302506 at *10 (finding that the plaintiff's
 12 counsel properly and timely authenticated the documents when his explanation
 13 was produced in response to the defendant's evidentiary objections).

14 **V. The Website Printouts and Prescription Forms Are NOT**
 15 **Hearsay Because They Are Not Being Offered To Prove The**
 16 **Truth Of The Matter Asserted**

17 Glidewell objects to the website printouts as hearsay. To be considered
 18 hearsay, the party offering the evidence must be using it to "prove the truth of
 19 the matter asserted in the statement." Fed. R. Evid. 801(c)(2). The third party
 20 website printouts introduced into evidence are being used to show the landscape
 21 of the dental field. For example, the printouts (1) portray dental professionals'
 22 use of terms such as BruxZir, bruxer, brux, zir and zirconia; (2) show how
 23 dental professionals are promoting their marks and services; and (3) show
 24 instances where Glidewell's mark is being used without a "circle-R" to denote a
 25 registered trademark.

26 Glidewell admits that these are Keating's uses for the evidence.
 27 (Glidewell's Objections 5: 5-23). Keating is not offering the website printouts
 28 to prove the truth of the statements on the website. For example, many of the

1 websites include laudatory comments about commercial products. For
2 Keating's purposes, it is irrelevant whether the dental professionals are being
3 truthful in the services that they offer on their websites or in how they use words
4 like BruxZir, bruxer, brux, zir or zirconium. It is only relevant that they are
5 portraying themselves and their products to the public in that way. The website
6 printouts are thus not inadmissible as hearsay.

7 Glidewell also makes hearsay objections to dental lab prescription forms
8 that Keating has provided to the Court as evidence. Yet Keating is not offering
9 the prescription forms to prove the truth of the matter asserted (that the dental
10 labs really will fulfill orders for the products identified on the prescription form,
11 or that a particular dentist was being truthful in filling out the form). It is
12 irrelevant whether the content of the prescriptions forms is truthful. What is
13 relevant is that the forms use certain terms, such as BruxZir, bruxer, brux, zir or
14 zirconium.

15 Glidewell's objections are further baseless because it is well-established
16 that an expert can rely on hearsay evidence to assist in forming opinions.
17 *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 595, 113 S.Ct. 2786, 125
18 L.Ed. 2d 469 (1993); Fed. R. Evid. 703. Here, Keating's expert, Dr. Eggleston,
19 is relying upon website printouts and dental lab prescription forms in forming
20 his opinion. Experts may reasonably rely on third party websites when forming
21 opinions relating to the use of trademarks. See Fed. R. Evid. 703. Accordingly,
22 even if the documents were hearsay—which they are not—the documents would
23 still be admissible as foundational documents for use by Dr. Eggleston.

24 **VI. All Of Keating's Evidence Is Relevant To The Subject Of**
25 **Genericness Because it Corroborates Evidence of Use of**
26 **"BruxZir" Prior to May 2011.**

27 Glidewell argues that much of Keating's evidence should be excluded
28 based on relevance. Under Rule 401, evidence is relevant if it has any tendency

1 to make a fact of consequence more or less probable than it would be without
2 the evidence. Fed. R. Evid. 401. “Any tendency” makes a finding of relevance
3 very easy to meet, and Keating’s evidence meets that standard.

4 Glidewell asserts that any information provided after April 2011 is
5 irrelevant. (Glidewell's Objections 6:12-23.) Here, Glidewell is assuming that
6 the only fact of consequence is whether there was generic use of BruxZir (or its
7 phonetic equivalents) before April 2011. But that is wrong.

8 Keating’s date of entry into the market with its all-zirconia product was
9 May 10, 2011. Therefore, any evidence up to and including May 10, 2011 falls
10 within the “crucial date” for determination of genericness.

11 Furthermore, evidence dated after the “crucial date” may still be relevant
12 to the extent it corroborates prior evidence. For example, the evidence can show
13 that after Keating’s entry into the market and after start of this litigation,
14 Glidewell has failed to properly police the use of its mark. This tends to show
15 that Glidewell has consistently failed to monitor the use of its mark and that it
16 has not changed any of its practices. The finder of fact can use this to support a
17 finding that the BruxZir mark, or its phonetic equivalent, has been generic for so
18 long that Glidewell has no ability to salvage the mark.

19 Establishing a comprehensive timeline of the use of the BruxZir name is
20 also relevant to understanding the status of BruxZir at the time of Keating’s
21 entry. As detailed in Keating’s concurrently-filed Reply Memorandum of
22 Points and Authorities in Support of Defendant's Motion for Summary
23 Judgment Cancelling Glidewell’s Trademark Registration, evidence dated after
24 the crucial genericness date is still relevant to the analysis. Expert surveys, for
25 example, are necessarily dated after the onset of litigation (and therefore after
26 the crucial date), but nevertheless are relied upon considerably in trademark
27 cases. *Committee for Idaho's High Desert v. Yost*, 92 F.3d 814, 822 (9th Cir.
28 1996); *see also Nightlight Sys., Inc., v. Nitelites Franchise Sys., Inc.*, 2007 WL

1 4563873 (N.D. Ga. 2007) (finding that deficiencies in the timeliness of a does
 2 not necessarily bar its admissibility); see also *Burger King Corp. v. Pilgrim's*
 3 *Pride Corp.*, 705 F. Supp. 1522, 1525 (S.D. Fla. 1988) (holding that a survey
 4 taken after the crucial date may not have its validity challenged for that reason).

5 Glidewell also objects to Keating's evidence under Federal Rule of
 6 Evidence 403, arguing that the evidence would "confuse and mislead" the fact
 7 finder so substantially as to outweigh the probative value of the evidence.
 8 (Glidewell's Objections 7:27-28-8:1.) Glidewell argues that a fact finder would
 9 find it difficult to organize the different dates, such that it would get so confused
 10 as to be unable to correctly apply the law. (Glidewell's Objections 7:27-28-8:1.)
 11 This argument has no merit. There are only two timeframes at issue—before
 12 Keating's entry and after Keating's entry. It is unlikely that anyone would find
 13 that confusing.

14 Glidewell also objects that the fact finder may establish genericness as to
 15 the incorrect time period. (Glidewell's Objections 7:27-28 - 8:1.) However,
 16 once the Court determines the "crucial date" for determining genericness, the
 17 Court will communicate that to the fact finder, who could readily abide by that
 18 date. Contrary to Glidewell's suggestion, organizing two time frames is not
 19 complicated beyond the abilities of the average person.

20 **VII. Response To Glidewell's Evidentiary Objections**

21 **A. Declaration of David Jankowski**

Exhibit	Response to Objection
4	Keating has relied on the following pages of Exhibit 4 and reserves the right to rely on any additional pages, if appropriate, to support its motions: 34-42, 52, 53, 61, 62, 73, 75, 76, 80, 81, 85-87, 98, 112, 122, 129, 135, 143, 170, 184-187, 211, 224-226, 233
5	Keating has relied on the following pages of Exhibit 5 and reserves

1		the right to rely on any additional pages, if appropriate, to support
2		its motions: 17-18, 44-47, 58-59, 63-68, 71, 72, 76-78, 93, 134, 135,
3		178
4	6	Keating has relied on the following pages of the Exhibit and
5		reserves the right to rely on any additional pages, if appropriate, to
6		support its motions: 51, 111-113, 117, 126, 137, 141-143, 195, 196,
7		204, 213-264
8	15	Glidewell objects to this exhibit, but it is the same document as
9		Glidewell's Exhibit 54 on which they rely (KDA-002222-2226).
10		
11		This document was authenticated at deposition by Mr. Robin
12		Carden, Glidewell's Vice President of Research & Development,
13		who authored the article. (Mangum Decl. [Doc. #92], Ex. 51 at
14		170:19-171:8.)
15	16	Glidewell objects to this exhibit, but it is the same document as
16		Glidewell's Exhibit 56 on which they rely (KDA-002037-2039).
17		
18		This document was authenticated at deposition by Mr. Robin
19		Carden, Glidewell's Vice President of Research & Development,
20		who authored the article. (Mangum Decl. [Doc. #92], Ex. 51 at
21		173:10-18.)
22	17	This document was produced by Glidewell in this case and bears
23		production number GL 124.
24		
25		This document was authenticated at deposition by Mr. Robin
26		Carden, Glidewell's Vice President of Research & Development,
27		who authored the article. (Mangum Decl. [Doc. #92], Ex. 51 at
28		

1		177:14-178:7.)
2	35	The evidence is relevant because it has a tendency to establish facts
3		of consequence to this action, such as corroborating the earlier use
4		of the mark, and because May 2011 is the date that Keating entered
5		the market. (FRE 401) There is no danger of unfair prejudice,
6		confusing the issues, wasting time, presenting cumulative evidence
7		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
8		
9		This exhibit is currently cited in the concurrently filed Reply
10		Memorandum of Points and Authorities in Support of Keating's
11		Motion for Summary Judgment of (1) No Infringement of
12		Glidewell's Registered Trademark, (2) No Violation of Section
13		43(a) of the Lanham Act, and (3) No Unfair Competition under
14		California Law.
15		
16		It is not hearsay because it is not being offered to prove the truth of
17		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra</i> .)
18		
19		The exhibits are authenticated by the Declarations filed herewith.
20		<i>See Jarritos</i> , 2007 WL 1302506 at *10. (<i>See</i> Sections I-IV <i>supra</i> .)
21	36	The evidence is relevant because it has a tendency to establish facts
22		of consequence to this action, such as corroborating the earlier use
23		of the mark, and because May 2011 is the date that Keating entered
24		the market. (FRE 401) There is no danger of unfair prejudice,
25		confusing the issues, wasting time, presenting cumulative evidence
26		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
27		
28		

1		It is not hearsay because it is not being offered to prove the truth of
2		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
3		
4		This exhibit is currently cited in the concurrently filed Reply
5		Memorandum of Points and Authorities in Support of Keating's
6		Motion for Summary Judgment Canceling Glidewell's Trademark
7		Registration.
8		
9		The exhibits are authenticated by the Declarations filed herewith.
10		<i>See Jarritos</i> , 2007 WL 1302506 at *10. (<i>See</i> Sections I-IV <i>supra.</i>)
11	37	The evidence is relevant because it has a tendency to establish facts
12		of consequence to this action, such as corroborating the earlier use
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14		the market. (FRE 401) There is no danger of unfair prejudice,
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16		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
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19		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
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21		The exhibits are authenticated by the Declarations filed herewith.
22		<i>See Jarritos</i> , 2007 WL 1302506 at *10. (<i>See</i> Sections I-IV <i>supra.</i>)
23	38	The evidence is relevant because it has a tendency to establish facts
24		of consequence to this action, such as corroborating the earlier use
25		of the mark, and because May 2011 is the date that Keating entered
26		the market. (FRE 401) There is no danger of unfair prejudice,
27		confusing the issues, wasting time, presenting cumulative evidence
28		

1		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
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3		It is not hearsay because it is not being offered to prove the truth of
4		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
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6		The exhibits are authenticated by the Declarations filed herewith.
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10		of the mark, and because May 2011 is the date that Keating entered
11		the market. (FRE 401) There is no danger of unfair prejudice,
12		confusing the issues, wasting time, presenting cumulative evidence
13		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
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16		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
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18		The exhibits are authenticated by the Declarations filed herewith.
19		<i>See Jarritos</i> , 2007 WL 1302506 at *10. (<i>See</i> Sections I-IV <i>supra.</i>)
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21		of consequence to this action, such as corroborating the earlier use
22		of the mark, and because May 2011 is the date that Keating entered
23		the market. (FRE 401) There is no danger of unfair prejudice,
24		confusing the issues, wasting time, presenting cumulative evidence
25		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
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27		It is not hearsay because it is not being offered to prove the truth of
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1		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
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3		This exhibit is currently cited in the concurrently filed Reply
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5		Motion for Summary Judgment Canceling Glidewell's Trademark
6		Registration.
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8		The exhibits are authenticated by the Declarations filed herewith.
9		<i>See Jarritos</i> , 2007 WL 1302506 at *10. (<i>See</i> Sections I-IV <i>supra.</i>)
10	41	The evidence is relevant because it has a tendency to establish facts
11		of consequence to this action, such as corroborating the earlier use
12		of the mark, and because May 2011 is the date that Keating entered
13		the market. (FRE 401) There is no danger of unfair prejudice,
14		confusing the issues, wasting time, presenting cumulative evidence
15		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
16		
17		The document in this exhibit was referenced in Dr. Eggleston's First
18		Supplemental Report (on page 3 as Deposition Exhibit 45). Because
19		that Supplemental Report was filed before creation of these
20		Exhibits, it does not reference the document as Exhibit 41. This
21		exhibit is also currently cited in the concurrently filed Reply
22		Memorandum of Points and Authorities in Support of Keating's
23		Motion for Summary Judgment Canceling Glidewell's Trademark
24		Registration.
25		
26		It is not hearsay because it is not being offered to prove the truth of
27		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
28		

	<p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i></p>
42	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. (FRE 801, 802) (<i>See Section V supra.</i>)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i></p>
43	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. (FRE 801, 802) (<i>See Section V supra.</i>)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i></p>

1	44	The evidence is relevant to illustrate the type of results that the
2		trademark examiner would have found had such a search been
3		performed. It is also probative to show the current conditions of the
4		genericness of the mark and relevant to the extent that it shows such
5		generic use was available in May 2011.
6		
7		The exhibits are authenticated by the Declarations filed herewith.
8		<i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i>
9	46	It is not hearsay because it is not being offered to prove the truth of
10		the matter asserted. (FRE 801, 802) (<i>See Section V supra.</i>)
11		
12		The exhibits are authenticated by the Declarations filed herewith.
13		<i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i>
14	47	It is not hearsay because it is not being offered to prove the truth of
15		the matter asserted. (FRE 801, 802) (<i>See Section V supra.</i>)
16		
17		The exhibits are authenticated by the Declarations filed herewith.
18		<i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i>
19	48	It is not hearsay because it is not being offered to prove the truth of
20		the matter asserted. (FRE 801, 802) (<i>See Section V supra.</i>)
21		
22		The exhibits are authenticated by the Declarations filed herewith.
23		<i>See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)</i>
24	49	It is not hearsay because it is not being offered to prove the truth of
25		the matter asserted. (FRE 801, 802) (<i>See Section V supra.</i>)
26		
27		The exhibits are authenticated by the Declarations filed herewith.
28		

*See Jarritos, 2007 WL 1302506 at *10. (See Sections I-IV supra.)*

B. Declaration of Dr. David W. Eggleston

Exhibit	Response to Objection
66	Dr. Eggleston attached his reports to his declaration which was signed under penalty of perjury. In his declaration he stated, under penalty of perjury, that the attached reports are true and correct copies of his opinions.
67	Dr. Eggleston attached his reports to his declaration which was signed under penalty of perjury. In his declaration he stated, under penalty of perjury, that the attached reports are true and correct copies of his opinions.
79	The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. See Rearden LLC, 597 F. Supp. 2d at 1027. (See Sections I-IV supra.)</i>
80	The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. See Rearden LLC, 597 F. Supp. 2d at 1027. (See Sections I-IV supra.)</i>
81	The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. See Rearden LLC, 597 F. Supp. 2d at 1027. (See Sections I-IV supra.)</i>
82	The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos, 2007 WL 1302506 at *10. Dr. Eggleston has</i>

1		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
2		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
3	83	The exhibits are authenticated by the Declarations filed herewith.
4		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
5		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
6		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
7	84	The exhibits are authenticated by the Declarations filed herewith.
8		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
9		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
10		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
11	85	The evidence is relevant because it has a tendency to establish facts
12		of consequence to this action, such as corroborating the earlier use
13		of the mark, and because May 2011 is the date that Keating entered
14		the market. (FRE 401) There is no danger of unfair prejudice,
15		confusing the issues, wasting time, presenting cumulative evidence
16		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
17		
18		This exhibit is currently cited in the concurrently filed Reply
19		Memorandum of Points and Authorities in Support of Keating's
20		Motion for Summary Judgment of (1) No Infringement of
21		Glidewell's Registered Trademark, (2) No Violation of Section
22		43(a) of the Lanham Act, and (3) No Unfair Competition under
23		California Law.
24		
25		It is not hearsay because it is not being offered to prove the truth of
26		the matter asserted. (FRE 801, 802) (<i>See</i> Section V <i>supra</i> .)
27		
28		

1		The exhibits are authenticated by the Declarations filed herewith.
2		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
3		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
4		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
5	86	The evidence is relevant because it has a tendency to establish facts
6		of consequence to this action, such as corroborating the earlier use
7		of the mark, and because May 2011 is the date that Keating entered
8		the market. (FRE 401) There is no danger of unfair prejudice,
9		confusing the issues, wasting time, presenting cumulative evidence
10		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
11		
12		This exhibit is currently cited in the concurrently filed Reply
13		Memorandum of Points and Authorities in Support of Keating's
14		Motion for Summary Judgment of (1) No Infringement of
15		Glidewell's Registered Trademark, (2) No Violation of Section
16		43(a) of the Lanham Act, and (3) No Unfair Competition under
17		California Law.
18		
19		It is not hearsay because it is not being offered to prove the truth of
20		the matter asserted. Regardless, experts may rely on hearsay
21		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
22		V <i>supra</i> .)
23		
24		The exhibits are authenticated by the Declarations filed herewith.
25		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
26		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
27		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
28		

1	87	The evidence is relevant because it has a tendency to establish facts
2		of consequence to this action, such as corroborating the earlier use
3		of the mark, and because May 2011 is the date that Keating entered
4		the market. (FRE 401) There is no danger of unfair prejudice,
5		confusing the issues, wasting time, presenting cumulative evidence
6		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
7		
8		This exhibit is currently cited in the concurrently filed Reply
9		Memorandum of Points and Authorities in Support of Keating's
10		Motion for Summary Judgment of (1) No Infringement of
11		Glidewell's Registered Trademark, (2) No Violation of Section
12		43(a) of the Lanham Act, and (3) No Unfair Competition under
13		California Law.
14		
15		It is not hearsay because it is not being offered to prove the truth of
16		the matter asserted. Regardless, experts may rely on hearsay
17		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
18		V <i>supra</i> .)
19		
20		The exhibits are authenticated by the Declarations filed herewith.
21		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
22		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
23		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
24	88	The evidence is relevant because it has a tendency to establish facts
25		of consequence to this action, such as corroborating the earlier use
26		of the mark, and because May 2011 is the date that Keating entered
27		the market. (FRE 401) There is no danger of unfair prejudice,
28		

1		confusing the issues, wasting time, presenting cumulative evidence
2		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
3		
4		This exhibit is currently cited in the concurrently filed Reply
5		Memorandum of Points and Authorities in Support of Keating's
6		Motion for Summary Judgment of (1) No Infringement of
7		Glidewell's Registered Trademark, (2) No Violation of Section
8		43(a) of the Lanham Act, and (3) No Unfair Competition under
9		California Law.
10		
11		It is not hearsay because it is not being offered to prove the truth of
12		the matter asserted. Regardless, experts may rely on hearsay
13		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
14		V <i>supra.</i>)
15		
16		The exhibits are authenticated by the Declarations filed herewith.
17		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
18		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
19		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
20	89	The evidence is relevant because it has a tendency to establish facts
21		of consequence to this action, such as corroborating the earlier use
22		of the mark, and because May 2011 is the date that Keating entered
23		the market. (FRE 401) There is no danger of unfair prejudice,
24		confusing the issues, wasting time, presenting cumulative evidence
25		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
26		
27		It is not hearsay because it is not being offered to prove the truth of
28		

1		the matter asserted. Regardless, experts may rely on hearsay
2		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
3		V <i>supra.</i>)
4		
5		The exhibits are authenticated by the Declarations filed herewith.
6		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
7		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
8		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
9	90	Glidewell objects to this exhibit, but it is the same as Glidewell's
10		Exhibit 11 on which they rely.
11		
12		The evidence is relevant because it has a tendency to establish facts
13		of consequence to this action, such as corroborating the earlier use
14		of the mark, and because May 2011 is the date that Keating entered
15		the market. (FRE 401) There is no danger of unfair prejudice,
16		confusing the issues, wasting time, presenting cumulative evidence
17		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
18		
19		It is not hearsay because it is not being offered to prove the truth of
20		the matter asserted and is an admission of a party opponent.
21		Regardless, experts may rely on hearsay statements in making their
22		opinions. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)
23		
24		The exhibits are authenticated by the Declarations filed herewith.
25		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
26		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
27		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
28		

1	91	The evidence is relevant because it has a tendency to establish facts
2		of consequence to this action, such as corroborating the earlier use
3		of the mark, and because May 2011 is the date that Keating entered
4		the market. (FRE 401) There is no danger of unfair prejudice,
5		confusing the issues, wasting time, presenting cumulative evidence
6		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
7		
8		This exhibit is currently cited in the concurrently filed Reply
9		Memorandum of Points and Authorities in Support of Keating's
10		Motion for Summary Judgment of (1) No Infringement of
11		Glidewell's Registered Trademark, (2) No Violation of Section
12		43(a) of the Lanham Act, and (3) No Unfair Competition under
13		California Law.
14		
15		It is not hearsay because it is not being offered to prove the truth of
16		the matter asserted. Regardless, experts may rely on hearsay
17		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
18		V <i>supra</i> .)
19		
20		The exhibits are authenticated by the Declarations filed herewith.
21		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
22		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
23		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
24	92	The evidence is relevant because it has a tendency to establish facts
25		of consequence to this action, such as corroborating the earlier use
26		of the mark, and because May 2011 is the date that Keating entered
27		the market. (FRE 401) There is no danger of unfair prejudice,
28		

1		confusing the issues, wasting time, presenting cumulative evidence
2		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
3		
4		It is not hearsay because it is not being offered to prove the truth of
5		the matter asserted. Regardless, experts may rely on hearsay
6		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
7		V <i>supra.</i>)
8		
9		This exhibit is currently cited in the concurrently filed Reply
10		Memorandum of Points and Authorities in Support of Keating's
11		Motion for Summary Judgment of (1) No Infringement of
12		Glidewell's Registered Trademark, (2) No Violation of Section
13		43(a) of the Lanham Act, and (3) No Unfair Competition under
14		California Law.
15		
16		The exhibits are authenticated by the Declarations filed herewith.
17		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
18		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
19		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
20	93	The evidence is relevant because it has a tendency to establish facts
21		of consequence to this action, such as corroborating the earlier use
22		of the mark, and because May 2011 is the date that Keating entered
23		the market. (FRE 401) There is no danger of unfair prejudice,
24		confusing the issues, wasting time, presenting cumulative evidence
25		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
26		
27		It is not hearsay because it is not being offered to prove the truth of
28		

	<p>the matter asserted. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See Section V supra.</i>)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See Sections I-IV supra.</i>)</p>
94	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>I It is not hearsay because it is not being offered to prove the truth of the matter asserted. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See Section V supra.</i>)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See Sections I-IV supra.</i>)</p>
95	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered</p>

1		the market. (FRE 401) There is no danger of unfair prejudice,
2		confusing the issues, wasting time, presenting cumulative evidence
3		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
4		
5		It is not hearsay because it is not being offered to prove the truth of
6		the matter asserted. Regardless, experts may rely on hearsay
7		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
8		V <i>supra.</i>)
9		
10		This exhibit is currently cited in the concurrently filed Reply
11		Memorandum of Points and Authorities in Support of Keating's
12		Motion for Summary Judgment of (1) No Infringement of
13		Glidewell's Registered Trademark, (2) No Violation of Section
14		43(a) of the Lanham Act, and (3) No Unfair Competition under
15		California Law.
16		
17		The exhibits are authenticated by the Declarations filed herewith.
18		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
19		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
20		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
21	96	The evidence is relevant because it has a tendency to establish facts
22		of consequence to this action, such as corroborating the earlier use
23		of the mark, and because May 2011 is the date that Keating entered
24		the market. (FRE 401) There is no danger of unfair prejudice,
25		confusing the issues, wasting time, presenting cumulative evidence
26		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
27		
28		

1		It is not hearsay because it is not being offered to prove the truth of
2		the matter asserted. Regardless, experts may rely on hearsay
3		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
4		V <i>supra</i> .)
5		
6		The exhibits are authenticated by the Declarations filed herewith.
7		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
8		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
9		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
10	97	The evidence is relevant because it has a tendency to establish facts
11		of consequence to this action, such as corroborating the earlier use
12		of the mark, and because May 2011 is the date that Keating entered
13		the market. (FRE 401) There is no danger of unfair prejudice,
14		confusing the issues, wasting time, presenting cumulative evidence
15		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
16		
17		Exhibit 97 was referred to in Keating's Statements of
18		Uncontroverted Facts, but was mistakenly cited as Exhibit 113
19		when it should have been cited as Exhibit 97. Exhibit 97 is the
20		document that matches the description in the text of the document.
21		This mistake occurs in the following documents: 1) ¶ 61 of
22		Keating's Statement of Uncontroverted Facts in Support of Its
23		Motion for Summary Judgment Canceling Glidewell's Trademark
24		and 2) ¶ 51 Keating's Statement of Uncontroverted Facts and
25		Conclusions of Law in Support of Motion for Summary Judgment
26		of Noninfringement of Glidewell's BruxZir® Trademark.
27		
28		

1		It is not hearsay because it is not being offered to prove the truth of
2		the matter asserted. Regardless, experts may rely on hearsay
3		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
4		<i>V supra.</i>)
5		
6		The exhibits are authenticated by the Declarations filed herewith.
7		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
8		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
9		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
10	98	The evidence is relevant because it has a tendency to establish facts
11		of consequence to this action, such as corroborating the earlier use
12		of the mark, and because May 2011 is the date that Keating entered
13		the market. (FRE 401) There is no danger of unfair prejudice,
14		confusing the issues, wasting time, presenting cumulative evidence
15		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
16		
17		It is not hearsay because it is not being offered to prove the truth of
18		the matter asserted. Regardless, experts may rely on hearsay
19		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
20		<i>V supra.</i>)
21		
22		This exhibit is currently cited in the concurrently filed Reply
23		Memorandum of Points and Authorities in Support of Keating's
24		Motion for Summary Judgment Canceling Glidewell's Trademark
25		Registration.
26		
27		The exhibits are authenticated by the Declarations filed herewith.
28		

1		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
2		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
3		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
4	99	The evidence is relevant because it has a tendency to establish facts
5		of consequence to this action, such as corroborating the earlier use
6		of the mark, and because May 2011 is the date that Keating entered
7		the market. (FRE 401) There is no danger of unfair prejudice,
8		confusing the issues, wasting time, presenting cumulative evidence
9		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
10		
11		It is not hearsay because it is not being offered to prove the truth of
12		the matter asserted. Regardless, experts may rely on hearsay
13		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
14		V <i>supra</i> .)
15		
16		The exhibits are authenticated by the Declarations filed herewith.
17		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
18		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
19		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
20	100	The evidence is relevant because it has a tendency to establish facts
21		of consequence to this action, such as corroborating the earlier use
22		of the mark, and because May 2011 is the date that Keating entered
23		the market. (FRE 401) There is no danger of unfair prejudice,
24		confusing the issues, wasting time, presenting cumulative evidence
25		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
26		
27		It is not hearsay because it is not being offered to prove the truth of
28		

1		the matter asserted. Regardless, experts may rely on hearsay
2		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
3		V <i>supra.</i>)
4		
5		The exhibits are authenticated by the Declarations filed herewith.
6		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
7		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
8		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
9	101	The evidence is relevant because it has a tendency to establish facts
10		of consequence to this action, such as corroborating the earlier use
11		of the mark, and because May 2011 is the date that Keating entered
12		the market. (FRE 401) There is no danger of unfair prejudice,
13		confusing the issues, wasting time, presenting cumulative evidence
14		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
15		
16		It is not hearsay because it is not being offered to prove the truth of
17		the matter asserted. Regardless, experts may rely on hearsay
18		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
19		V <i>supra.</i>)
20		
21		The exhibits are authenticated by the Declarations filed herewith.
22		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
23		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
24		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
25	102	The evidence is relevant because it has a tendency to establish facts
26		of consequence to this action, such as corroborating the earlier use
27		of the mark, and because May 2011 is the date that Keating entered
28		

1		the market. (FRE 401) There is no danger of unfair prejudice,
2		confusing the issues, wasting time, presenting cumulative evidence
3		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
4		
5		It is not hearsay because it is not being offered to prove the truth of
6		the matter asserted. Regardless, experts may rely on hearsay
7		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
8		V <i>supra.</i>)
9		
10		The exhibits are authenticated by the Declarations filed herewith.
11		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
12		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
13		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
14	103	The evidence is relevant because it has a tendency to establish facts
15		of consequence to this action, such as corroborating the earlier use
16		of the mark, and because May 2011 is the date that Keating entered
17		the market. (FRE 401) There is no danger of unfair prejudice,
18		confusing the issues, wasting time, presenting cumulative evidence
19		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
20		
21		It is not hearsay because it is not being offered to prove the truth of
22		the matter asserted. Regardless, experts may rely on hearsay
23		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
24		V <i>supra.</i>)
25		
26		The exhibits are authenticated by the Declarations filed herewith.
27		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
28		

1		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
2		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
3	104	The evidence is relevant because it has a tendency to establish facts
4		of consequence to this action, such as corroborating the earlier use
5		of the mark, and because May 2011 is the date that Keating entered
6		the market. (FRE 401) There is no danger of unfair prejudice,
7		confusing the issues, wasting time, presenting cumulative evidence
8		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
9		
10		It is not hearsay because it is not being offered to prove the truth of
11		the matter asserted. Regardless, experts may rely on hearsay
12		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
13		V <i>supra</i> .)
14		
15		The exhibits are authenticated by the Declarations filed herewith.
16		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
17		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
18		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
19	105	The evidence is relevant because it has a tendency to establish facts
20		of consequence to this action, such as corroborating the earlier use
21		of the mark, and because May 2011 is the date that Keating entered
22		the market. (FRE 401) There is no danger of unfair prejudice,
23		confusing the issues, wasting time, presenting cumulative evidence
24		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
25		
26		It is not hearsay because it is not being offered to prove the truth of
27		the matter asserted. Regardless, experts may rely on hearsay
28		

1		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
2		<i>V supra.</i>)
3		
4		The exhibits are authenticated by the Declarations filed herewith.
5		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
6		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
7		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
8	106	The evidence is relevant because it has a tendency to establish facts
9		of consequence to this action, such as corroborating the earlier use
10		of the mark, and because May 2011 is the date that Keating entered
11		the market. (FRE 401) There is no danger of unfair prejudice,
12		confusing the issues, wasting time, presenting cumulative evidence
13		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)
14		
15		It is not hearsay because it is not being offered to prove the truth of
16		the matter asserted. Regardless, experts may rely on hearsay
17		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
18		<i>V supra.</i>)
19		
20		The exhibits are authenticated by the Declarations filed herewith.
21		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
22		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
23		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra.</i>)
24	107	The evidence is relevant because it has a tendency to establish facts
25		of consequence to this action, such as corroborating the earlier use
26		of the mark, and because May 2011 is the date that Keating entered
27		the market. (FRE 401) There is no danger of unfair prejudice,
28		

	<p>confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>This exhibit is currently cited in the concurrently filed Reply Memorandum of Points and Authorities in Support of Keating's Motion for Summary Judgment Canceling Glidewell's Trademark Registration.</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
108	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
109	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice,</p>

	<p>confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
110	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
111	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has</p>

1		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
2		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
3	112	The evidence is relevant because it has a tendency to establish facts
4		of consequence to this action, such as corroborating the earlier use
5		of the mark, and because May 2011 is the date that Keating entered
6		the market. (FRE 401) There is no danger of unfair prejudice,
7		confusing the issues, wasting time, presenting cumulative evidence
8		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
9		
10		The exhibits are authenticated by the Declarations filed herewith.
11		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
12		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
13		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
14	113	The evidence is relevant because it has a tendency to establish facts
15		of consequence to this action, such as corroborating the earlier use
16		of the mark, and because May 2011 is the date that Keating entered
17		the market. (FRE 401) There is no danger of unfair prejudice,
18		confusing the issues, wasting time, presenting cumulative evidence
19		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
20		
21		The exhibits are authenticated by the Declarations filed herewith.
22		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
23		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
24		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
25	114	The evidence is relevant because it has a tendency to establish facts
26		of consequence to this action, such as corroborating the earlier use
27		of the mark, and because May 2011 is the date that Keating entered
28		

	<p>the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
115	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>This exhibit is currently cited in the concurrently filed Reply Memorandum of Points and Authorities in Support of Keating's Motion for Summary Judgment of (1) No Infringement of Glidewell's Registered Trademark, (2) No Violation of Section 43(a) of the Lanham Act, and (3) No Unfair Competition under California Law.</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
116	<p>The evidence is relevant because it has a tendency to establish facts</p>

1		of consequence to this action, such as corroborating the earlier use
2		of the mark, and because May 2011 is the date that Keating entered
3		the market. (FRE 401) There is no danger of unfair prejudice,
4		confusing the issues, wasting time, presenting cumulative evidence
5		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
6		
7		This exhibit is currently cited in the concurrently filed Reply
8		Memorandum of Points and Authorities in Support of Keating's
9		Motion for Summary Judgment of (1) No Infringement of
10		Glidewell's Registered Trademark, (2) No Violation of Section
11		43(a) of the Lanham Act, and (3) No Unfair Competition under
12		California Law.
13		
14		The exhibits are authenticated by the Declarations filed herewith.
15		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
16		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
17		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
18	117	The evidence is relevant because it has a tendency to establish facts
19		of consequence to this action, such as corroborating the earlier use
20		of the mark, and because May 2011 is the date that Keating entered
21		the market. (FRE 401) There is no danger of unfair prejudice,
22		confusing the issues, wasting time, presenting cumulative evidence
23		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
24		
25		The exhibits are authenticated by the Declarations filed herewith.
26		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
27		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
28		

1		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
2	118	The evidence is relevant because it has a tendency to establish facts
3		of consequence to this action, such as corroborating the earlier use
4		of the mark, and because May 2011 is the date that Keating entered
5		the market. (FRE 401) There is no danger of unfair prejudice,
6		confusing the issues, wasting time, presenting cumulative evidence
7		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
8		
9		The document in this exhibit was referenced and relied on in Dr.
10		Eggleston's First Supplemental Report at 4:14-21. Because that
11		Supplemental Report was filed before creation of these Exhibits, it
12		does not reference the document as Exhibit 118.
13		
14		The exhibits are authenticated by the Declarations filed herewith.
15		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
16		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
17		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
18	119	The evidence is relevant because it has a tendency to establish facts
19		of consequence to this action, such as corroborating the earlier use
20		of the mark, and because May 2011 is the date that Keating entered
21		the market. (FRE 401) There is no danger of unfair prejudice,
22		confusing the issues, wasting time, presenting cumulative evidence
23		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
24		
25		The exhibits are authenticated by the Declarations filed herewith.
26		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
27		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
28		

1		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
2	120	The evidence is relevant because it has a tendency to establish facts
3		of consequence to this action, such as corroborating the earlier use
4		of the mark, and because May 2011 is the date that Keating entered
5		the market. (FRE 401) There is no danger of unfair prejudice,
6		confusing the issues, wasting time, presenting cumulative evidence
7		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
8		
9		The exhibits are authenticated by the Declarations filed herewith.
10		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
11		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
12		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
13	121	The evidence is relevant because it has a tendency to establish facts
14		of consequence to this action, such as corroborating the earlier use
15		of the mark, and because May 2011 is the date that Keating entered
16		the market. (FRE 401) There is no danger of unfair prejudice,
17		confusing the issues, wasting time, presenting cumulative evidence
18		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
19		
20		The exhibits are authenticated by the Declarations filed herewith.
21		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
22		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
23		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
24	122	The evidence is relevant because it has a tendency to establish facts
25		of consequence to this action, such as corroborating the earlier use
26		of the mark, and because May 2011 is the date that Keating entered
27		the market. (FRE 401) There is no danger of unfair prejudice,
28		

	<p>confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
123	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
124	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has</p>

1		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
2		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
3	125	The evidence is relevant because it has a tendency to establish facts
4		of consequence to this action, such as corroborating the earlier use
5		of the mark, and because May 2011 is the date that Keating entered
6		the market. (FRE 401) There is no danger of unfair prejudice,
7		confusing the issues, wasting time, presenting cumulative evidence
8		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
9		
10		The exhibits are authenticated by the Declarations filed herewith.
11		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
12		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
13		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
14	126	The evidence is relevant because it has a tendency to establish facts
15		of consequence to this action, such as corroborating the earlier use
16		of the mark, and because May 2011 is the date that Keating entered
17		the market. (FRE 401) There is no danger of unfair prejudice,
18		confusing the issues, wasting time, presenting cumulative evidence
19		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
20		
21		The exhibits are authenticated by the Declarations filed herewith.
22		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
23		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
24		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
25	127	The evidence is relevant because it has a tendency to establish facts
26		of consequence to this action, such as corroborating the earlier use
27		of the mark, and because May 2011 is the date that Keating entered
28		

1		the market. (FRE 401) There is no danger of unfair prejudice,
2		confusing the issues, wasting time, presenting cumulative evidence
3		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
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5		The exhibits are authenticated by the Declarations filed herewith.
6		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
7		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
8		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
9	128	The evidence is relevant because it has a tendency to establish facts
10		of consequence to this action, such as corroborating the earlier use
11		of the mark, and because May 2011 is the date that Keating entered
12		the market. (FRE 401) There is no danger of unfair prejudice,
13		confusing the issues, wasting time, presenting cumulative evidence
14		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
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16		The exhibits are authenticated by the Declarations filed herewith.
17		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
18		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
19		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
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24		confusing the issues, wasting time, presenting cumulative evidence
25		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
26		
27		The exhibits are authenticated by the Declarations filed herewith.
28		

1		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
2		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
3		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
4	130	The evidence is relevant because it has a tendency to establish facts
5		of consequence to this action, such as corroborating the earlier use
6		of the mark, and because May 2011 is the date that Keating entered
7		the market. (FRE 401) There is no danger of unfair prejudice,
8		confusing the issues, wasting time, presenting cumulative evidence
9		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
10		
11		The exhibits are authenticated by the Declarations filed herewith.
12		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
13		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
14		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
15	131	The evidence is relevant because it has a tendency to establish facts
16		of consequence to this action, such as corroborating the earlier use
17		of the mark, and because May 2011 is the date that Keating entered
18		the market. (FRE 401) There is no danger of unfair prejudice,
19		confusing the issues, wasting time, presenting cumulative evidence
20		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
21		
22		The exhibits are authenticated by the Declarations filed herewith.
23		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
24		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
25		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
26	132	The evidence is relevant because it has a tendency to establish facts
27		of consequence to this action, such as corroborating the earlier use
28		

1		of the mark, and because May 2011 is the date that Keating entered
2		the market. (FRE 401) There is no danger of unfair prejudice,
3		confusing the issues, wasting time, presenting cumulative evidence
4		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
5		
6		The exhibits are authenticated by the Declarations filed herewith.
7		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
8		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
9		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
10	133	The evidence is relevant because it has a tendency to establish facts
11		of consequence to this action, such as corroborating the earlier use
12		of the mark, and because May 2011 is the date that Keating entered
13		the market. (FRE 401) There is no danger of unfair prejudice,
14		confusing the issues, wasting time, presenting cumulative evidence
15		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
16		
17		The exhibits are authenticated by the Declarations filed herewith.
18		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
19		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
20		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
21	134	The evidence is relevant because it has a tendency to establish facts
22		of consequence to this action, such as corroborating the earlier use
23		of the mark, and because May 2011 is the date that Keating entered
24		the market. (FRE 401) There is no danger of unfair prejudice,
25		confusing the issues, wasting time, presenting cumulative evidence
26		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
27		
28		

	<p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
135	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
136	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See</i> Section V <i>supra</i>.)</p>

	<p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>
137	<p>The evidence is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark, and because May 2011 is the date that Keating entered the market. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See</i> Section V <i>supra</i>.)</p> <p>The exhibits are authenticated by the Declarations filed herewith. <i>See Jarritos</i>, 2007 WL 1302506 at *10. Dr. Eggleston has sufficient personal knowledge to authenticate the exhibits. <i>See Rearden LLC</i>, 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i>.)</p>

C. Declaration of Rustin K. Mangum

Exhibit	Response to Objection
50	<p>Keating has relied on the following pages of the Exhibit and reserves the right to rely on any additional pages, if appropriate, to support its motions: 15, 16, 19-21, 33-35, 41-43, 52, 53, 72-74, 87, 88, 128, 138-141, 176-178, 195, 199, 200, 235</p>

1	51	Keating has relied on the following pages of the Exhibit and
2		reserves the right to rely on any additional pages, if appropriate, to
3		support its motions: 85, 86, 97, 102, 141, 142, 201, 202, 208, 209
4	52	Keating has relied on the following pages of the Exhibit and
5		reserves the right to rely on any additional pages, if appropriate, to
6		support its motions: 19-21, 62-64, 50-52, 72
7	53	Keating has relied on the following pages of the Exhibit and
8		reserves the right to rely on any additional pages, if appropriate, to
9		support its motions: 20, 26-28, 38, 47, 48, 56, 57, 60, 63, 64, 66,
10		68, 96, 97
11	54	Keating has relied on the following pages of the Exhibit and
12		reserves the right to rely on any additional pages, if appropriate, to
13		support its motions: 20, 43- 47, 83, 86,
14	55	The exhibits are authenticated by the Declarations filed herewith.
15		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
16		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
17		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
18	56	The exhibits are authenticated by the Declarations filed herewith.
19		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
20		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
21		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
22	57	The exhibits are authenticated by the Declarations filed herewith.
23		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
24		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
25		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
26	58	The exhibits are authenticated by the Declarations filed herewith.
27		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
28		

1		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
2		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
3	59	The evidence is relevant because it has a tendency to establish facts
4		of consequence to this action, such as corroborating the earlier use
5		of the mark, and because May 2011 is the date that Keating entered
6		the market. (FRE 401) There is no danger of unfair prejudice,
7		confusing the issues, wasting time, presenting cumulative evidence
8		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
9		
10		It is not hearsay because it is not being offered to prove the truth of
11		the matter asserted. Instead it is being used to show how dentists
12		use the BruxZir mark. The truth of the statements made within the
13		documents is irrelevant. Regardless, experts may rely on hearsay
14		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
15		V <i>supra</i> .)
16		
17		The exhibits are authenticated by the Declarations filed herewith.
18		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
19		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
20		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
21	60	The evidence is relevant because it has a tendency to establish facts
22		of consequence to this action, such as corroborating the earlier use
23		of the mark, and because May 2011 is the date that Keating entered
24		the market. (FRE 401) There is no danger of unfair prejudice,
25		confusing the issues, wasting time, presenting cumulative evidence
26		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
27		
28		

1		It is not hearsay because it is not being offered to prove the truth of
2		the matter asserted. Instead it is being used to show how dentists
3		use the BruxZir mark. The truth of the statements made within the
4		documents is irrelevant. Regardless, experts may rely on hearsay
5		statements in making their opinions. (FRE 801, 802) (<i>See Section</i>
6		<i>V supra.</i>)
7		
8		The exhibits are authenticated by the Declarations filed herewith.
9		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
10		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
11		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See Sections I-IV supra.</i>)
12	61	The evidence is relevant because it has a tendency to establish facts
13		of consequence to this action, such as corroborating the earlier use
14		of the mark, and because May 2011 is the date that Keating entered
15		the market. (FRE 401) There is no danger of unfair prejudice,
16		confusing the issues, wasting time, presenting cumulative evidence
17		or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)
18		
19		It is not hearsay because it is not being offered to prove the truth of
20		the matter asserted. Instead it is being used to show how dentists
21		use the BruxZir mark. The truth of the statements made within the
22		documents is irrelevant. Regardless, experts may rely on hearsay
23		statements in making their opinions. (FRE 801, 802) (<i>See Section</i>
24		<i>V supra.</i>)
25		
26		The exhibits are authenticated by the Declarations filed herewith.
27		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
28		

1		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
2		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
3	62	The evidence is relevant because it has a tendency to establish facts
4		of consequence to this action, such as corroborating the earlier use
5		of the mark, and because May 2011 is the date that Keating entered
6		the market. (FRE 401) There is no danger of unfair prejudice,
7		confusing the issues, wasting time, presenting cumulative evidence
8		or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
9		
10		It is not hearsay because it is not being offered to prove the truth of
11		the matter asserted. Instead it is being used to show how dentists
12		use the BruxZir mark. The truth of the statements made within the
13		documents is irrelevant. Regardless, experts may rely on hearsay
14		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
15		V <i>supra</i> .)
16		
17		The exhibits are authenticated by the Declarations filed herewith.
18		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
19		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
20		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
21	63	The exhibits are authenticated by the Declarations filed herewith.
22		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
23		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
24		<i>Rearden LLC</i> , 597 F. Supp. 2d at 1027. (<i>See</i> Sections I-IV <i>supra</i> .)
25	64	The exhibits are authenticated by the Declarations filed herewith.
26		<i>See Jarritos</i> , 2007 WL 1302506 at *10. Dr. Eggleston has
27		sufficient personal knowledge to authenticate the exhibits. <i>See</i>
28		

Rearden LLC, 597 F. Supp. 2d at 1027. (See Sections I-IV *supra*.)

D. Declaration of Jeffrey Van Hoosear

Exhibit	Response to Objection
V-4	The evidence is relevant because it has a tendency to establish facts of consequence to this action. The video illustrates both the phonetic equivalence of the terms “BruxZir” and “bruxer” as well as illustrate Glidewell’s use of “BruxZir” as a noun which is probative of generic use. While Glidewell alleges that Dr. DiTolla does not pronounce “bruxer” in this video, he does pronounce “BruxZir” in this video exactly the same as the way he pronounces “bruxer” in Ex. V-2.

E. Declaration of Lori Boatright

Exhibit	Response to Objection
A	Lori Boatright attached her reports to her declaration which was signed under penalty of perjury. In her declaration she stated, under penalty of perjury, that the attached reports are true and correct copies of her opinions.

F. Declaration of Carol Frattura

Paragraph	Response to Objection
8	Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE

1		403) (<i>See</i> Section VI <i>supra.</i>)
2		
3		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
4		<i>supra.</i>)
5		
6		Frattura's statement is drawn from her personal knowledge and
7		experience in the dental field, therefore her opinion is based on
8		sufficient personal knowledge and is not speculative.
9	18	Evidence from before and after May 2011 is relevant because it
10		has a tendency to establish facts of consequence to this action,
11		such as corroborating the earlier use of the mark. (FRE 401) There
12		is no danger of unfair prejudice, confusing the issues, wasting
13		time, presenting cumulative evidence or misleading the jury. (FRE
14		403) (<i>See</i> Section VI <i>supra.</i>)
15		
16		Frattura's statement is drawn from her personal knowledge and
17		experience in the dental field, therefore her opinion is based on
18		sufficient personal knowledge and is not speculative.
19	Exhibit	
20	A (portions	Evidence from before and after May 2011 is relevant because it
21	of)	has a tendency to establish facts of consequence to this action,
22		such as corroborating the earlier use of the mark. (FRE 401) There
23		is no danger of unfair prejudice, confusing the issues, wasting
24		time, presenting cumulative evidence or misleading the jury. (FRE
25		403) (<i>See</i> Section VI <i>supra.</i>)
26		
27		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
28		

1	<i>supra.</i>)
2	
3	It is not hearsay because it is not being offered to prove the truth of
4	the matter asserted. Instead it is being used to show how dentists
5	use the BruxZir mark. The truth of the statements made within the
6	documents is irrelevant. (FRE 801, 802) (<i>See Section V supra.</i>)

7

8 G. Declaration of William Belton

9	Paragraph	Response to Objection
10	9	Evidence from before and after May 2011 is relevant because it
11		has a tendency to establish facts of consequence to this action,
12		such as corroborating the earlier use of the mark. (FRE 401) There
13		is no danger of unfair prejudice, confusing the issues, wasting
14		time, presenting cumulative evidence or misleading the jury. (FRE
15		403) (<i>See Section VI supra.</i>)
16		
17		Not specifying a date is not grounds for objection. (<i>See Section VI</i>
18		<i>supra.</i>)
19	10	Evidence from before and after May 2011 is relevant because it
20		has a tendency to establish facts of consequence to this action,
21		such as corroborating the earlier use of the mark. (FRE 401) There
22		is no danger of unfair prejudice, confusing the issues, wasting
23		time, presenting cumulative evidence or misleading the jury. (FRE
24		403) (<i>See Section VI supra.</i>)
25		
26		Not specifying a date is not grounds for objection. (<i>See Section VI</i>
27		<i>supra.</i>)

28

Exhibit	
A	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See Section VI supra.</i>)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. Instead it is being used to show how dentists use the BruxZir mark. The truth of the statements made within the documents is irrelevant. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See Section V supra.</i>)</p>

H. Declaration of Dr. Raymond Brady

Paragraph	Response to Objection
9	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p>

1		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
2		<i>supra.</i>)
3	10	Evidence from before and after May 2011 is relevant because it
4		has a tendency to establish facts of consequence to this action,
5		such as corroborating the earlier use of the mark. (FRE 401) There
6		is no danger of unfair prejudice, confusing the issues, wasting
7		time, presenting cumulative evidence or misleading the jury. (FRE
8		403) (<i>See</i> Section VI <i>supra.</i>)
9	Exhibit	
10	A	Evidence from before and after May 2011 is relevant because it
11		has a tendency to establish facts of consequence to this action,
12		such as corroborating the earlier use of the mark. (FRE 401) There
13		is no danger of unfair prejudice, confusing the issues, wasting
14		time, presenting cumulative evidence or misleading the jury. (FRE
15		403) (<i>See</i> Section VI <i>supra.</i>)
16		
17		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
18		<i>supra.</i>)
19		
20		It is not hearsay because it is not being offered to prove the truth of
21		the matter asserted. Instead it is being used to show how dentists
22		use the BruxZir mark. The truth of the statements made within the
23		documents is irrelevant. Regardless, experts may rely on hearsay
24		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
25		V <i>supra.</i>)

I. Declaration of Dr. Jonathan Campbell

Paragraph	Response to Objection
10	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See Section VI supra.</i>)</p>
11	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p>
Exhibit	
A	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See Section VI supra.</i>)</p>

1		It is not hearsay because it is not being offered to prove the truth of
2		the matter asserted. Instead it is being used to show how dentists
3		use the BruxZir mark. The truth of the statements made within the
4		documents is irrelevant. Regardless, experts may rely on hearsay
5		statements in making their opinions. (FRE 801, 802) (<i>See Section</i>
6		<i>V supra.</i>)

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8 J. Declaration of Dr. Michael Colleran

9	Paragraph	Response to Objection
10	10	Evidence from before and after May 2011 is relevant because it
11		has a tendency to establish facts of consequence to this action,
12		such as corroborating the earlier use of the mark. (FRE 401) There
13		is no danger of unfair prejudice, confusing the issues, wasting
14		time, presenting cumulative evidence or misleading the jury. (FRE
15		403) (<i>See Section VI supra.</i>)
16		
17		Not specifying a date is not grounds for objection. (<i>See Section VI</i>
18		<i>supra.</i>)
19	11	Evidence from before and after May 2011 is relevant because it
20		has a tendency to establish facts of consequence to this action,
21		such as corroborating the earlier use of the mark. (FRE 401) There
22		is no danger of unfair prejudice, confusing the issues, wasting
23		time, presenting cumulative evidence or misleading the jury. (FRE
24		403) (<i>See Section VI supra.</i>)
25	12	Evidence from before and after May 2011 is relevant because it
26		has a tendency to establish facts of consequence to this action,
27		such as corroborating the earlier use of the mark. (FRE 401) There
28		

	is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i> .)
	Not specifying a date is not grounds for objection. (<i>See</i> Section VI <i>supra</i> .)
Exhibit	
A	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra</i>.)</p> <p>Not specifying a date is not grounds for objection. (<i>See</i> Section VI <i>supra</i>.)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. Instead it is being used to show how dentists use the BruxZir mark. The truth of the statements made within the documents is irrelevant. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See</i> Section V <i>supra</i>.)</p>

K. Declaration of Dr. Joseph Jacquinot

Paragraph	Response to Objection
9	Evidence from before and after May 2011 is relevant because it

	<p>has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See</i> Section VI <i>supra.</i>)</p>
10	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)</p>
11	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See</i> Section VI <i>supra.</i>)</p>
Exhibit	
A	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There</p>

1	is no danger of unfair prejudice, confusing the issues, wasting
2	time, presenting cumulative evidence or misleading the jury. (FRE
3	403) (<i>See</i> Section VI <i>supra</i> .)
4	
5	Not specifying a date is not grounds for objection. (<i>See</i> Section VI
6	<i>supra</i> .)
7	
8	It is not hearsay because it is not being offered to prove the truth of
9	the matter asserted. Instead it is being used to show how dentists
10	use the BruxZir mark. The truth of the statements made within the
11	documents is irrelevant. Regardless, experts may rely on hearsay
12	statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
13	V <i>supra</i> .)

14

15 L. Declaration of Dr. Dennis Murphy

16	Paragraph	Response to Objection
17	9	Evidence from before and after May 2011 is relevant because it
18		has a tendency to establish facts of consequence to this action,
19		such as corroborating the earlier use of the mark. (FRE 401) There
20		is no danger of unfair prejudice, confusing the issues, wasting
21		time, presenting cumulative evidence or misleading the jury. (FRE
22		403) (<i>See</i> Section VI <i>supra</i> .)
23		
24		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
25		<i>supra</i> .)
26	10	Evidence from before and after May 2011 is relevant because it
27		has a tendency to establish facts of consequence to this action,
28		

1		such as corroborating the earlier use of the mark. (FRE 401) There
2		is no danger of unfair prejudice, confusing the issues, wasting
3		time, presenting cumulative evidence or misleading the jury. (FRE
4		403) (<i>See</i> Section VI <i>supra.</i>)
5	11	Evidence from before and after May 2011 is relevant because it
6		has a tendency to establish facts of consequence to this action,
7		such as corroborating the earlier use of the mark. (FRE 401) There
8		is no danger of unfair prejudice, confusing the issues, wasting
9		time, presenting cumulative evidence or misleading the jury. (FRE
10		403) (<i>See</i> Section VI <i>supra.</i>)
11		
12		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
13		<i>supra.</i>)
14	Exhibit	
15	A	Evidence from before and after May 2011 is relevant because it
16		has a tendency to establish facts of consequence to this action,
17		such as corroborating the earlier use of the mark. (FRE 401) There
18		is no danger of unfair prejudice, confusing the issues, wasting
19		time, presenting cumulative evidence or misleading the jury. (FRE
20		403) (<i>See</i> Section VI <i>supra.</i>)
21		
22		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
23		<i>supra.</i>)
24		
25		It is not hearsay because it is not being offered to prove the truth of
26		the matter asserted. Instead it is being used to show how dentists
27		use the BruxZir mark. The truth of the statements made within the
28		

1		documents is irrelevant. Regardless, experts may rely on hearsay
2		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
3		V <i>supra.</i>)

4

5 M. Declaration of Dr. Terry Myers

6	Paragraph	Response to Objection
7	8	Evidence from before and after May 2011 is relevant because it
8		has a tendency to establish facts of consequence to this action,
9		such as corroborating the earlier use of the mark. (FRE 401) There
10		is no danger of unfair prejudice, confusing the issues, wasting
11		time, presenting cumulative evidence or misleading the jury. (FRE
12		403) (<i>See</i> Section VI <i>supra.</i>)
13		
14		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
15		<i>supra.</i>)
16	9	Evidence from before and after May 2011 is relevant because it
17		has a tendency to establish facts of consequence to this action,
18		such as corroborating the earlier use of the mark. (FRE 401) There
19		is no danger of unfair prejudice, confusing the issues, wasting
20		time, presenting cumulative evidence or misleading the jury. (FRE
21		403) (<i>See</i> Section VI <i>supra.</i>)
22	10	Evidence from before and after May 2011 is relevant because it
23		has a tendency to establish facts of consequence to this action,
24		such as corroborating the earlier use of the mark. (FRE 401) There
25		is no danger of unfair prejudice, confusing the issues, wasting
26		time, presenting cumulative evidence or misleading the jury. (FRE
27		403) (<i>See</i> Section VI <i>supra.</i>)

	Not specifying a date is not grounds for objection. (<i>See</i> Section VI <i>supra.</i>)
Exhibit	
B	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See</i> Section VI <i>supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See</i> Section VI <i>supra.</i>)</p> <p>It is not hearsay because it is not being offered to prove the truth of the matter asserted. Instead it is being used to show how dentists use the BruxZir mark. The truth of the statements made within the documents is irrelevant. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (<i>See</i> Section V <i>supra.</i>)</p>

N. Declaration of Dr. Thomas Nussear

Paragraph	Response to Objection
9	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting</p>

1		time, presenting cumulative evidence or misleading the jury. (FRE
2		403) (<i>See</i> Section VI <i>supra.</i>)
3		
4		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
5		<i>supra.</i>)
6	10	Evidence from before and after May 2011 is relevant because it
7		has a tendency to establish facts of consequence to this action,
8		such as corroborating the earlier use of the mark. (FRE 401) There
9		is no danger of unfair prejudice, confusing the issues, wasting
10		time, presenting cumulative evidence or misleading the jury. (FRE
11		403) (<i>See</i> Section VI <i>supra.</i>)
12	11	Evidence from before and after May 2011 is relevant because it
13		has a tendency to establish facts of consequence to this action,
14		such as corroborating the earlier use of the mark. (FRE 401) There
15		is no danger of unfair prejudice, confusing the issues, wasting
16		time, presenting cumulative evidence or misleading the jury. (FRE
17		403) (<i>See</i> Section VI <i>supra.</i>)
18		
19		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
20		<i>supra.</i>)
21	Exhibit	
22	A	Evidence from before and after May 2011 is relevant because it
23		has a tendency to establish facts of consequence to this action,
24		such as corroborating the earlier use of the mark. (FRE 401) There
25		is no danger of unfair prejudice, confusing the issues, wasting
26		time, presenting cumulative evidence or misleading the jury. (FRE
27		403) (<i>See</i> Section VI <i>supra.</i>)
28		

1	
2	Not specifying a date is not grounds for objection. (<i>See</i> Section VI
3	<i>supra.</i>)
4	
5	It is not hearsay because it is not being offered to prove the truth of
6	the matter asserted. Instead it is being used to show how dentists
7	use the BruxZir mark. The truth of the statements made within the
8	documents is irrelevant. Regardless, experts may rely on hearsay
9	statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
10	V <i>supra.</i>)

11

12 O. Declaration of Dr. Stan Richardson

13	Paragraph	Response to Objection
14	10	Evidence from before and after May 2011 is relevant because it
15		has a tendency to establish facts of consequence to this action,
16		such as corroborating the earlier use of the mark. (FRE 401) There
17		is no danger of unfair prejudice, confusing the issues, wasting
18		time, presenting cumulative evidence or misleading the jury. (FRE
19		403) (<i>See</i> Section VI <i>supra.</i>)
20		
21		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
22		<i>supra.</i>)
23	11	Evidence from before and after May 2011 is relevant because it
24		has a tendency to establish facts of consequence to this action,
25		such as corroborating the earlier use of the mark. (FRE 401) There
26		is no danger of unfair prejudice, confusing the issues, wasting
27		time, presenting cumulative evidence or misleading the jury. (FRE
28		

1		403) (<i>See</i> Section VI <i>supra.</i>)
2	12	Evidence from before and after May 2011 is relevant because it
3		has a tendency to establish facts of consequence to this action,
4		such as corroborating the earlier use of the mark. (FRE 401) There
5		is no danger of unfair prejudice, confusing the issues, wasting
6		time, presenting cumulative evidence or misleading the jury. (FRE
7		403) (<i>See</i> Section VI <i>supra.</i>)
8	Exhibit	
9	A	Evidence from before and after May 2011 is relevant because it
10		has a tendency to establish facts of consequence to this action,
11		such as corroborating the earlier use of the mark. (FRE 401) There
12		is no danger of unfair prejudice, confusing the issues, wasting
13		time, presenting cumulative evidence or misleading the jury. (FRE
14		403) (<i>See</i> Section VI <i>supra.</i>)
15		
16		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
17		<i>supra.</i>)
18		
19		It is not hearsay because it is not being offered to prove the truth of
20		the matter asserted. Instead it is being used to show how dentists
21		use the BruxZir mark. The truth of the statements made within the
22		documents is irrelevant. Regardless, experts may rely on hearsay
23		statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
24		V <i>supra.</i>)

P. Declaration of Dr. Richard Scott

Paragraph	Response to Objection
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1	9	Evidence from before and after May 2011 is relevant because it
2		has a tendency to establish facts of consequence to this action,
3		such as corroborating the earlier use of the mark. (FRE 401) There
4		is no danger of unfair prejudice, confusing the issues, wasting
5		time, presenting cumulative evidence or misleading the jury. (FRE
6		403) (<i>See</i> Section VI <i>supra.</i>)
7		
8		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
9		<i>supra.</i>)
10	10	Evidence from before and after May 2011 is relevant because it
11		has a tendency to establish facts of consequence to this action,
12		such as corroborating the earlier use of the mark. (FRE 401) There
13		is no danger of unfair prejudice, confusing the issues, wasting
14		time, presenting cumulative evidence or misleading the jury. (FRE
15		403) (<i>See</i> Section VI <i>supra.</i>)
16	11	Evidence from before and after May 2011 is relevant because it
17		has a tendency to establish facts of consequence to this action,
18		such as corroborating the earlier use of the mark. (FRE 401) There
19		is no danger of unfair prejudice, confusing the issues, wasting
20		time, presenting cumulative evidence or misleading the jury. (FRE
21		403) (<i>See</i> Section VI <i>supra.</i>)
22		
23		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
24		<i>supra.</i>)
25	Exhibit	
26	A	Evidence from before and after May 2011 is relevant because it
27		has a tendency to establish facts of consequence to this action,
28		

1	such as corroborating the earlier use of the mark. (FRE 401) There
2	is no danger of unfair prejudice, confusing the issues, wasting
3	time, presenting cumulative evidence or misleading the jury. (FRE
4	403) (<i>See</i> Section VI <i>supra.</i>)
5	
6	Not specifying a date is not grounds for objection. (<i>See</i> Section VI
7	<i>supra.</i>)
8	
9	It is not hearsay because it is not being offered to prove the truth of
10	the matter asserted. Instead it is being used to show how dentists
11	use the BruxZir mark. The truth of the statements made within the
12	documents is irrelevant. Regardless, experts may rely on hearsay
13	statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
14	V <i>supra.</i>)

15

16 Q. Declaration of Dr. Schott Stephens

17	Paragraph	Response to Objection
18	10	Evidence from before and after May 2011 is relevant because it
19		has a tendency to establish facts of consequence to this action,
20		such as corroborating the earlier use of the mark. (FRE 401) There
21		is no danger of unfair prejudice, confusing the issues, wasting
22		time, presenting cumulative evidence or misleading the jury. (FRE
23		403) (<i>See</i> Section VI <i>supra.</i>)
24		
25		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
26		<i>supra.</i>)
27	11	Evidence from before and after May 2011 is relevant because it

28

1		has a tendency to establish facts of consequence to this action,
2		such as corroborating the earlier use of the mark. (FRE 401) There
3		is no danger of unfair prejudice, confusing the issues, wasting
4		time, presenting cumulative evidence or misleading the jury. (FRE
5		403) (<i>See</i> Section VI <i>supra.</i>)
6	12	Evidence from before and after May 2011 is relevant because it
7		has a tendency to establish facts of consequence to this action,
8		such as corroborating the earlier use of the mark. (FRE 401) There
9		is no danger of unfair prejudice, confusing the issues, wasting
10		time, presenting cumulative evidence or misleading the jury. (FRE
11		403) (<i>See</i> Section VI <i>supra.</i>)
12		
13		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
14		<i>supra.</i>)
15		
16		Dr. Stephens specifically states, “From my dental training and
17		experience,” he knows the facts put forth in this paragraph.
18		(Stephens Decl. ¶ 12.) Dr. Stephens graduated from dental school
19		in 1997 and has been working as a dentist for 11 years. (Stephens
20		Decl., ¶ 1.) Certainly this “dental training and experience” provide
21		his basis for knowing how the term “bruxer” is pronounced in the
22		dental industry.
23	Exhibit	
24	A	Evidence from before and after May 2011 is relevant because it
25		has a tendency to establish facts of consequence to this action,
26		such as corroborating the earlier use of the mark. (FRE 401) There
27		is no danger of unfair prejudice, confusing the issues, wasting
28		

1	time, presenting cumulative evidence or misleading the jury. (FRE
2	403) (<i>See</i> Section VI <i>supra.</i>)
3	
4	Not specifying a date is not grounds for objection. (<i>See</i> Section VI
5	<i>supra.</i>)
6	
7	It is not hearsay because it is not being offered to prove the truth of
8	the matter asserted. Instead it is being used to show how dentists
9	use the BruxZir mark. The truth of the statements made within the
10	documents is irrelevant. Regardless, experts may rely on hearsay
11	statements in making their opinions. (FRE 801, 802) (<i>See</i> Section
12	V <i>supra.</i>)

13

14 R. Declaration of Dr. Daniel Sweet

15	Paragraph	Response to Objection
16	8	Evidence from before and after May 2011 is relevant because it
17		has a tendency to establish facts of consequence to this action,
18		such as corroborating the earlier use of the mark. (FRE 401) There
19		is no danger of unfair prejudice, confusing the issues, wasting
20		time, presenting cumulative evidence or misleading the jury. (FRE
21		403) (<i>See</i> Section VI <i>supra.</i>)
22		
23		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
24		<i>supra.</i>)
25	9	Evidence from before and after May 2011 is relevant because it
26		has a tendency to establish facts of consequence to this action,
27		such as corroborating the earlier use of the mark. (FRE 401) There
28		

1		is no danger of unfair prejudice, confusing the issues, wasting
2		time, presenting cumulative evidence or misleading the jury. (FRE
3		403) (<i>See</i> Section VI <i>supra</i> .)
4	10	Evidence from before and after May 2011 is relevant because it
5		has a tendency to establish facts of consequence to this action,
6		such as corroborating the earlier use of the mark. (FRE 401) There
7		is no danger of unfair prejudice, confusing the issues, wasting
8		time, presenting cumulative evidence or misleading the jury. (FRE
9		403) (<i>See</i> Section VI <i>supra</i> .)
10		
11		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
12		<i>supra</i> .)
13		
14		The witness is testifying of what his own personal understanding is
15		of a term used in the dental industry and how he came to that
16		understanding. There is no requirement for the witness to provide
17		specific dates and recall a list of specific advertisements to
18		substantiate his own personal understanding or make it relevant.
19	Exhibit	
20	A	Evidence from before and after May 2011 is relevant because it
21		has a tendency to establish facts of consequence to this action,
22		such as corroborating the earlier use of the mark. (FRE 401) There
23		is no danger of unfair prejudice, confusing the issues, wasting
24		time, presenting cumulative evidence or misleading the jury. (FRE
25		403) (<i>See</i> Section VI <i>supra</i> .)
26		
27		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
28		

supra.)

It is not hearsay because it is not being offered to prove the truth of the matter asserted. Instead it is being used to show how dentists use the BruxZir mark. The truth of the statements made within the documents is irrelevant. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (*See Section V supra.*)

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S. Declaration of Dr. Gary P. Tobin

Paragraph	Response to Objection
9	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting time, presenting cumulative evidence or misleading the jury. (FRE 403) (<i>See Section VI supra.</i>)</p> <p>Not specifying a date is not grounds for objection. (<i>See Section VI supra.</i>)</p>
10	<p>Evidence from before and after May 2011 is relevant because it has a tendency to establish facts of consequence to this action, such as corroborating the earlier use of the mark. (FRE 401) There is no danger of unfair prejudice, confusing the issues, wasting</p>

1		time, presenting cumulative evidence or misleading the jury. (FRE
2		403) (<i>See</i> Section VI <i>supra.</i>)
3	11	Evidence from before and after May 2011 is relevant because it
4		has a tendency to establish facts of consequence to this action,
5		such as corroborating the earlier use of the mark. (FRE 401) There
6		is no danger of unfair prejudice, confusing the issues, wasting
7		time, presenting cumulative evidence or misleading the jury. (FRE
8		403) (<i>See</i> Section VI <i>supra.</i>)
9		
10		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
11		<i>supra.</i>)
12		
13		The witness is testifying of his personal recollection of what he has
14		observed and of his personal understanding. There is no
15		requirement for the witness to provide specific dates and recall
16		specific facts for testimony of his personal understanding to be
17		relevant. He is not providing testimony as an expert in the
18		industry.
19	Exhibit	
20	A	Evidence from before and after May 2011 is relevant because it
21		has a tendency to establish facts of consequence to this action,
22		such as corroborating the earlier use of the mark. (FRE 401) There
23		is no danger of unfair prejudice, confusing the issues, wasting
24		time, presenting cumulative evidence or misleading the jury. (FRE
25		403) (<i>See</i> Section VI <i>supra.</i>)
26		
27		Not specifying a date is not grounds for objection. (<i>See</i> Section VI
28		

supra.)

It is not hearsay because it is not being offered to prove the truth of the matter asserted. Instead it is being used to show how dentists use the BruxZir mark. The truth of the statements made within the documents is irrelevant. Regardless, experts may rely on hearsay statements in making their opinions. (FRE 801, 802) (*See Section V supra.*)

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 3, 2012

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